

Case No. VEE-0028

April 4, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Laney Oil Company, Inc.

Date of Filing: June 18, 1996

Case Number: VEE-0028

On June 18, 1996, the Laney Oil Company, Inc., (Laney Oil) of Monroe, North Carolina, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Laney Oil requests relief from the obligation to file the Energy Information Administration's (EIA) form entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have decided that the Application for Exception should be granted in part.

A. Background

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while reducing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to reduce the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce time spent completing the forms, firms may rely upon reasonable estimates.

B. Exceptions Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25 (b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can show that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh a firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for many years is grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that the requirements placed a burden upon them that were significantly different from the inconvenience generally associated with the requirement to submit EIA forms. In the past, relief has been granted due to personnel shortages, financial difficulties, administrative problems and extreme circumstances. See *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on

maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when a computer operator broke wrist); Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice); Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five month relief because of a flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); and Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

C. Laney Oil's Application for Exception

Laney Oil is a medium-sized firm that sells No. 2 diesel and motor gasoline to wholesale and retail customers in North Carolina and South Carolina. The firm has been participating continuously in the EIA-782B survey since April of 1994.

The firm requests that it be excused from filing Form EIA-782B because in May 1996 it had to replace its Financial Controller, a longtime employee who compiled the information submitted on the Form. According to the firm, at that time no other employee was able to perform this function. The firm also stated that, because of the time necessary to become familiar with its financial operations, the new Controller would not be able to complete the Form EIA-782B in an efficient manner until January of 1997. See Memorandum of Telephone Conversation between Linda Lazarus, Staff Attorney, Office of Hearings and Appeals, and Ronnie Thomas, Operations Comptroller of Laney Oil (June 25, 1996).

D. Analysis

We see no reason to excuse Laney Oil from filing Form EIA-782B completely. While the firm will no doubt experience some inconvenience in filing the Forms, this inconvenience is not greater than that experienced by other reporting firms. Nothing in the record shows that Laney Oil is financially distressed or that, after its Financial Controller becomes familiar with operations, the reporting requirement will burden the firm in a unique or exceptional way.

At the same time, the data collected from Form EIA-782B is the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and respond effectively to any future supply disruptions. Unless firms such as Laney Oil are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Laney Oil of providing the requested data after January 1997 outweighs the benefits that the DOE and the nation receive from access to the information.

However, there will be some unusual difficulty in filing the past due forms. Under these circumstances, we find that a limited form of relief is warranted. Belcher Oil Co., 15 DOE ¶ 81,018 (1987). The firm has said that the Financial Controller was able to complete the Form without undue difficulty after January 1, 1997. In order to balance Laney Oil's temporary difficulties against the importance of providing the Form data, we will allow the firm an extension of time until ninety days after the date of the issuance of this Decision and Order to submit to the EIA the Forms EIA-782B for the months of April of 1996 through December of 1996. Accordingly, the Application for Exception filed by Laney Oil will be granted in part.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Laney Oil Company, Inc., on June 18, 1996, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Laney Oil Company, Inc., will be granted an extension of time until ninety days after the issuance of this Decision and Order to submit the data that it was required to file with the Energy Information Administration of the Department of Energy on Form EIA-782B during the period between April and December of 1996.
- (3) Any person who is aggrieved or adversely affected by the denial of exception relief may seek administrative review of this Decision and Order. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: April 4, 1997